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Message Text

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42
ACTION L-02

INFO OCT-01 IO-10 ISO-00 AF-10 ARA-10 EA-10 EUR-12 NEA-10

RSC-01 OIC-02 SS-15 SP-02 H-02 NSC-05 CIAE-00 INR-07

NSAE-00 PA-02 USIA-15 PRS-01 /117 W
---------- 024051
R 071601Z NOV 74
FM USMISSION USUN NY
TO SECSTATE WASHDC 7164
INFO USMISSION GENEVA

UNCLAS USUN 4796

E.O. 11652: N/A
TAGS: UN, ILC
SUBJ: UNGA LEGAL COMITE : REPORT OF THE INTERNATIONAL
LAW COMMISSION

1. GENERAL DEBATE IN LEGAL COMITE ON SUBJECT ITEM CONTINUED NOV 5, WITH INTERVENTIONS BY MEXICO, UKRAINE, JORDAN, PAKISTAN AND FRANCE DELS. FOLLOWING ARE SOME POINTS OF INTERESTS.

2. MEXICO DEL EMPHASIZED ITS GREAT INTEREST WITH ILC DRAFT ARTICLES ON STATE RESPONSIBILITY. MEXICO DEL STATED, IN SOMEWHAT ABSTRACT MANNER, THAT HIS COUNTRY HAD, IN PAST HISTORY, BEEN SUBJECT TO INTERFERENCE FROM (UNNAMED) MAJOR POWERS REQUIRING MEXICO TO DEFEND, IN INTERNATIONAL TRIBUNALS, LEGITIMATE ACTIONS MEXICO HAD TAKEN WITH RESPECT TO INDIVIDUALS AND ENTITIES WITHIN ITS JURISDICTION. EMPHASIZING SUCH PROBLEMS WERE FULLY IN THE PAST, MEXICO DEL STATED THIS HISTORY SERVED TO MOTIVATE MEXICO DESIRE TO SEE END TO ALL INTERFERENCE IN INTERNAL AFFAIRS, AND TO THAT END, MEXICO LOOKED FORWARD TO GREATER PROGRESS IN COMPLETION DRAFT ARTICLES ON STATE RESPONSIBILITY. MEXICO DEL ALSO NOTED THAT, IN ITS VIEW, ARTICLE 6 OF DRAFT ARTICLES SHOULD REQUIRE THAT IN ORDER FOR STATE RESPONSIBILITY TO ARISE IN ANY INSTANCE
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THERE MUST FIRST BE A SHOWING OF (A) REAL DAMAGE, AND

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(B) EXHAUSTION OF LOCAL REMEDIES. ADDITIONALLY, ARTICLE 8 APPEARED TO EXPAND DANGEROUSLY THE SCOPE OF ACTS FALLING WITHIN STATE RESPONSIBILITY. MEXICO DEL SUPPORTED ILC POSITION VIS-A-VIS THE JOINT INSPECTION UNIT (JIU) REPORT.

3. JORDAN AND MOROCCO DELS SUPPORTED "CLEAN STATE" APPROACH IN ILC DRAFT ARTICLES ON SUCCESSION OF STATES. AS IN ACCORD WITH PRINCIPLE OF SELF-DETERMINATION. MOROCCO DEL SUPPORTED PERMANENT 12 WEEK SESSION FOR ILC, AND OPINED JIU REPORT MUST HAVE BEEN RESULT OF JIU MINUNDERSTANDING.

4. PAKISTAN DEL THOUGHT DRAFT ARTICLES ON STATE RESPONSIBILITY SHOULD REFLECT PRINCIPLE OF "ABUSE OF RIGHTS", AND CONTAIN PROVISION CONCERNING AGGRESSION. ADDITIONALLY, PAKISTAN DEL THOUGHT ILC SUBCOMMITTEE ON NON-NAVIGATIONAL USES OF WATERCOURSES SHOULD GIVE HIGH PRIORITY TO STUDY OF FLOOD CONTROL AND EROSION. PAKISTAN DEL REGRETTED JIU CONTROVERSY.

5. FRANCE DEL STATED IT WAS PREMATURE TO DECIDE TO HOLD DIPLOMATIC CONFERENCE ON DRAFT ARTICLES ON SUCCESSION OF STATES. AS MAIN ISSUE, FRANCE DEL SUGGESTED WE SHOULD GIVE SERIOUS CONSIDERATION TO KIND OF INSTRUMENT DRAFT ARTICLES WOULD FORM. NOTING THAT A TREATY CAN BE USED AGAINST A STATE ONLY AS OF TIME OF STATE'S ADHERENCE THERETO, FRANCE ARGUED THAT IF DRAFT ARTICLES ON SUCCESSION OF STATES WERE CODIFIED AS A CONVENTION, IT WOULD NOT BIND NEW STATES. THIS IT MIGHT BE ADVISABLE THAT SOME DIFFERENT KIND OF INSTRUMENT BE DRAFTED; AND AS PRELIMINARY THOUGHT, FRANCE DEL SUGGESTED THAT A RESOLUTION MIGHT PROVIDE APPROPRIATE CONTEXT. PASSING TO SUBSTANCE OF DRAFT ARTICLES, FRENCH DEL NOTED TEXT WAS NOT ENTIRELY ACCEPTABLE. FRENCH DEL QUESTIONED ILC EXPLANATION THAT ITS USE OF "CLEAN SLATE" APPROACH CONSTITUTED CODIFICATION OF EXISTING RPT EXISTING INTERNATIONAL LAW. HE CONTENDED STATE PRACTICE ON SUBJECT IS EXCEEDINGLY DIVERSE, AND ACCORDINGLY, NO CLEAR CUSTOMARY LAW CAN BE DISCERNED. ALSO, FRENCH
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DEL QUESTIONED LINKAGE OF "CLEAN SLATE" PRINCIPLE WITH SELF-DETERMINATION, WHICH DID NOT SEEM TO FRENCH SUCH AN OBVIOUS LINKAGE. HE STATED THERE SHOULD BE MORE EXCEPTIONS TO "CLEAN SLATE" PRINCIPLE, IN THE INTEREST OF GREATER "CONTINUITY". ON DRAFT ARTICLES ON TREATIES BETWEEN STATES AND IOS, FRENCH DEL STATED THAT, IN ITS VIEW, AN IO HAS CAPACITY TO ENTER INTO INTERNATIONAL AGREEMENTS ONLY RPT ONLY WHERE ITS

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CONSTITUENT INSTRUMENT EXPRESSLY PROVIDES. ON NON-NAVIGATIONAL USES OF WATERCOURSES, HE DID NOT DEEM IT ADVISABLE FOR ILC TO STUDY POLLUTION SINCE STATE PRACTICE VARIES DEPENDING ON LOCATION OF CONTROVERSY AND STAGE OF STATES DEVELOPMENT. VARIOUS REGIONAL (WHICH FRENCH PREFERRED) AND SPECIALIZED ORGANIZATIONS, LIKE OECD AND COUNCIL OF EUROPE ARE STUDYING THIS QUESTION NOW. HE FOUND IT DIFFICULT TO SUPPORT, IN PRINCIPLE, PERMANENT 12 WEEK SESSION FOR ILC SINCE DECISION DEPENDS SO MUCH ON IMPORTANCE AND AMOUNT OF WORK TO BE DONE.

6. AT END OF MEETING CHAIR ANNOUNCED THERE REMAINED 35 MEMBERS INSCRIBED TO SPEAK ON ITEM.
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